

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IVAN P. LEIDY,)
Plaintiff)
vs.) Civil Action No. 98-1299
AMERICAN FAMILY PUBLISHERS;) Judge Joy Flowers Conti/
PUBLISHERS CLEARING HOUSE; and) Magistrate Judge Sensenich
UNITED STATES POSTAL SERVICE;) Re: Doc. # 13
Defendants)

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is recommended that Plaintiff's request for leave to proceed in forma pauperis be denied without prejudice and that the complaint received from Plaintiff on August 4, 2005 be struck without prejudice to his right to file a new complaint at a new civil action number.

II. REPORT

On June 4, 1999, The Honorable Robert J. Cindrich, a former United States District Judge of this Court, entered an order granting a motion to dismiss filed by Defendant, United States Postal Service. On June 30, 1999, Judge Cindrich entered an order directing that Plaintiff's claims against American Family Publishers be dismissed without prejudice based on a report and recommendation which recommended dismissal without prejudice because Defendant, American Family Publishers, had not been served with the complaint and summons within 120 days of the

filings, as required by Federal Rule of Civil Procedure 4(m). The dismissal was without prejudice to refiling of a new complaint at a new civil action number. Plaintiff has now, over six years later, submitted a new complaint in which he has used the civil action number of his old case, which was dismissed. Therefore, Plaintiff's new civil complaint, has been improperly filed at this old civil action number. Consequently, the complaint filed by Plaintiff on August 4, 2005, should be struck without prejudice to his right to file a new civil complaint at a new civil action number.

Plaintiff has submitted a request for leave to proceed in forma pauperis. However, he paid the filing fee for this action when he filed the first complaint and, therefore, there is no need for him to be granted leave to proceed in forma pauperis. He may file a request for leave to proceed in forma pauperis if he files a new civil complaint at a new civil action number.

Therefore, it is recommended that Plaintiff's request for leave to proceed in forma pauperis be denied without prejudice and that the complaint received from Plaintiff on August 4, 2005 be struck without prejudice to his right to file a new complaint at a new civil action number.

In accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.1.4(B) of the Local Rules for Magistrates, the parties are allowed ten (10) days from the date

of service to file objections to this report and recommendation. Any party opposing the objections shall have seven (7) days from the date of service of objections to respond thereto. Failure to file timely objections may constitute a waiver of any appellate rights.

s/Ila Jeanne Sensenich
ILA JEANNE SENSENICH
U.S. Magistrate Judge

Dated: September 6, 2005

Notice sent electronically or via U.S. mail to:

Mr. Ivan P. Leidy
The Overlook, Room 55
520 New Castle Street
New Wilmington, PA 16142
(CERTIFIED MAIL, RETURN RECEIPT REQUESTED)

Rebecca Ross Haywood, Esquire
Assistant United States Attorney
Western District of Pennsylvania
700 Grant Street, Suite 4000
Pittsburgh, PA 15219